



## Wildlife and Sport Fish Restoration Program



### Policy Advisory FY21-002: Gulf of Mexico Energy Security Act Funds Ineligible as Match to National Coastal Wetlands Conservation Grants

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**To:** Service staff associated with the National Coastal Wetlands Conservation Grant Program

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**Summary:** The Gulf of Mexico Energy Security Act (GOMESA) of 2006 created provisions for the four Gulf oil and gas producing states (Alabama, Louisiana, Mississippi and Texas) and their coastal political subdivisions (CPSs) whereby these entities receive a portion of the revenue generated from oil and gas production offshore in the Gulf of Mexico. GOMESA funds are to be used for coastal conservation, restoration, and hurricane protection. One of the States that receives GOMESA funds requested the Service consider if GOMESA funds could be used toward the non-Federal match for a National Coastal Wetlands Conservation Program grant.

Without specific language in the Act, directing that these funds shall not be considered Federal funds for matching requirements in Federal awards, or language in a specific grant statute authorizing the use of these funds as non-Federal funds for matching purposes, they cannot be utilized as non-Federal match. The GOMESA statute does not authorize these funds to be utilized as non-Federal match for Federal awards. The legal determination is that under current laws, funds that are transferred to States and CPSs under the provisions of GOMESA remain Federal funds and are not eligible to be used toward the required non-Federal match under the National Coastal Wetlands Conservation Grant Program.

### **SUPPORTING INFORMATION**

Funds available to Gulf States and Political Subdivisions under the Gulf of Mexico Energy Security Act, Public Law 109-432, 43 U.S.C. 1331, (GOMESA) are federally appropriated funds. The DOI describes information applicable to the administration of GOMESA at 30 CFR parts 519 and 219. Funds are disbursed under the catalogue of Federal disbursement authorities, following Dept. of the Treasury rules, but not technically done as grants. The funds are Federal monies that the Federal government collects, and under the procedures found in statute, shares the revenues with identified recipients. Federal regulations set forth

formulas and methodologies for calculating and allocating revenues to the States of Alabama, Louisiana, Mississippi, and Texas; their eligible coastal political subdivisions; the Land and Water Conservation Fund; and the United States Treasury. DOI, through the Office of Natural Resources Revenue, disburse these Federally-appropriated funds. The characteristics of funding with States and eligible subdivisions has some qualities of a grant, but the recipients do not have to apply, projects do not need to be approved before execution, and recipients are not required to send in reports at the end of the year. Recipients have certain discretion for how funds are spent, within the rules relevant to the funding and only for the types of projects authorized. Those recipients who spend more than \$750,000 are subject to a single audit. There are consequences under Federal laws and policies if funds are not spent appropriately. The funds are appropriated by Congress and the Federal government, through statute and regulation, sets parameters for allocation, distribution, and use of the funds. There is no indication in the GOMESA statute that Congress intended these funds to be utilized as non-Federal match for Federal awards, which would be required for this funding to be available as non-Federal match to a Federal award.

There is language in the preamble (Note: language in a preamble describes an agency's approach and provides explanation but does not have the force of law) to 30 CFR 291 (73 FR 78622, Dec. 23, 2008) that responds to a comment made to the proposed rule. The response supports the need for statutory language to provide an exception if the intent of Congress is to allow use of any Federal funds and non-Federal match to a Federal award. The preamble states:

*The States of Alabama and Louisiana requested that MMS specify in the regulations that a State can use GOMESA funds to match Federal grant programs that are consistent with GOMESA's authorized uses. As noted in Louisiana's comments, the GOMESA is silent on the use of GOMESA funds for cost sharing or matching requirements with other Federal grant programs and various other forms of Federal assistance. Thus, consistent with a Federal grant program's application of funds for GOMESA authorized uses, it appears that GOMESA funds may be used to meet a certain Federal program's recipient matching requirement depending on whether or not that specific Federal program's statutory language or guidelines specifically excludes Federal funds from being used by the recipient as matching funds.*

The U.S. Code that governs the National Coastal Wetlands Conservation Grant Program clearly states that match must be from a non-Federal source.

## **16 U.S.C. §3954. National coastal wetlands conservation grants**

### **(d) Cost-sharing**

#### **(1) Federal share**

Grants to coastal States of matching moneys by the Director for any fiscal year to carry out coastal wetlands conservation projects shall be used for the payment of not to exceed

50 percent of the total costs of such projects: except that such matching moneys may be used for payment of not to exceed 75 percent of the costs of such projects if a coastal State has established and is using one of the following for the purpose of acquiring coastal wetlands, other natural areas or open spaces:

(A) a trust fund from which the principal is not spent; or

(B) a fund derived from a dedicated recurring source of monies including, but not limited to, real estate transfer fees or taxes, cigarette taxes, tax check-offs, or motor vehicle license plate fees.

**(2) Form of State share**

The matching moneys required of a coastal State to carry out a coastal wetlands conservation project shall be derived from a non-Federal source.

**(3) In-kind contributions**

In addition to cash outlays and payments, in-kind contributions of property or personnel services by non-Federal interests for activities under this section may be used for the non-Federal share of the cost of those activities.

References:

Larry Mellinger, DOI, Office of the Solicitor

Darrel Redford, DOI, Office of Natural Resources Revenue, Natural Resources Revenue Data